

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**WILLIAM SMITH,**

**Plaintiff,**

**-v-**

**08-CV-0485Sr**

**MICHAEL BENSON, Superintendent, et al.,**

**Defendants.**

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**DECISION AND ORDER**

On November 4, 2011, the Court entered a Decision and Order directing, in part, the Clerk of the Court to issue a subpoena duces tecum for the production of certain documents to Dr. Russell Blair, RN, Ph.D., State Commission of Corrections, and to cause the United States Marshals Service to serve the subpoena duces tecum on Dr. Blair. (Docket No. 41.) On November 30, 2010, the Marshals Service submitted a Process Receipt and Return indicating that the subpoena had not been served (Docket No. 51), and plaintiff, who has been granted permission to proceed *in forma pauperis* (Docket No. 6), has again requested the Court to direct service of the subpoena duces tecum on Dr. Blair. (Docket No. 57.)

Accordingly, the Clerk of the Court is directed to complete and issue a subpoena duces tecum for the production of the following documents from Dr. Blair: **any and all documents regarding Dr. Blair's review of plaintiff William Smith's medical records and visits with Mr. Smith at the Erie County Holding Center, and Dr. Blair's recommendation that plaintiff be provided with hearing aids.**

The Clerk of the Court is also directed to complete the United States Marshal Services' Process Receipt and Return Form (USM-285) and cause the Marshals Service to serve the subpoena duces tecum on Russell Blair, RN, Ph.D, Executive Department, Forensic Medical Unit, New York State Commission of Corrections, 80 Wolf Rd., 4<sup>th</sup> Floor, Albany, New York 12205-2010, by certified mail forthwith.

Plaintiff has also requested the Court to direct the Clerk of the Court to issue a subpoena for the purpose of serving a third-party, State of New York Executive Department, State Commission of Corrections, with interrogatories. (Docket Nos. 52, 53, 57.) This request must be denied because interrogatories pursuant to Fed.R.Civ.P. 33 may be served on a "party" only, not third-parties. Accordingly, plaintiff's request for the issuance of a subpoena for the purposes of serving interrogatories on the State of New York Executive Department, State Commission of Corrections is **DENIED**.<sup>1</sup>

**SO ORDERED.**

DATED: Buffalo, New York  
February 17, 2011

s/ H. Kenneth Schroeder, Jr.  
**H. KENNETH SCHROEDER, JR.**  
**United States Magistrate Judge**

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<sup>1</sup>To the extent plaintiff may be requesting the issuance of a subpoena so he can take "Depositions by Written Questions," pursuant to Rule 31, plaintiff may request the issuance of a subpoena for such purposes but he first must comply with each of the requirements of Rule 31, which includes, *inter alia*, leave of court—i.e., plaintiff must first file a motion seeking to take a Deposition by Written Questions on the State of New York Executive Department, State Commission of Correction.